

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

NANCY L. BIDDLE,	:	
	:	I.D. No. 0501009912
Defendant-Below,	:	
Appellant,	:	Crim. A. No. 05-01-1052
	:	
v.	:	
	:	
STATE OF DELAWARE,	:	
	:	
Plaintiff-Below,	:	
Appellee.	:	

Submitted: January 18, 2006

Decided: February 14, 2006

**ORDER**

Upon Appellant's Appeal From a Decision  
of the Court of Common Pleas. Denied.

Lloyd A. Schmid, Esquire, Office of the Public Defender, Dover, Delaware; attorneys  
for the Appellant.

Gregory R. Babowal, Esquire, Department of Justice, Dover, Delaware; attorneys for  
the Appellee.

WITHAM, R.J.

Defendant, Nancy Biddle, appealed to this Court from a decision of the Court of Common Pleas (“Court-below”), in which she was found guilty of violating 11 *Del. C. § 1335(a)(2)*.<sup>1</sup> The bench trial was conducted on stipulated facts. Those facts were: (1) Defendant did intentionally attach a GPS Tracking Device to the bottom of the victim’s vehicle, on the frame, with the intent to track the vehicle’s location and movement in Kent County, Delaware; (2) the GPS Tracking Device can only track the movement and location of the vehicle; and (3) Defendant removed the GPS Tracking Device prior to police involvement.

Defendant argues that the Court-below incorrectly determined that her conduct was prohibited by Section 1335(a)(2). Specifically, Defendant contends that the technology she used is not capable of violating Section 1335(a)(2) and there is no clear law that would indicate that placing a GPS tracking device on a vehicle violates a person’s privacy. The State asserts that there is, in fact, an expectation of privacy in the undercarriage of one’s vehicle. In its opinion, the Court of Common Pleas held that there is an expectation of privacy and that placing a GPS tracking device in the undercarriage of a vehicle violates that expectation of privacy.

For the reasons set forth below, the decision of the Court of Common Pleas is *affirmed*.

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<sup>1</sup>Section 1335(a)(2) states, in relevant part, “A person is guilty of violation of privacy when, except as authorized by law, the person: . . . (2) Installs in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place.”

### ***Standard of Review***

“The standard of review for appeals to this Court from the Court of Common Pleas is ‘limited to correcting errors of law and determining whether substantial evidence exists to support factual findings.’ In its position as an intermediate appellate court, this Court “‘functions in the same manner as the Supreme Court.’”<sup>2</sup> This Court reviews the case on the record, not *de novo*.<sup>3</sup> This Court will not disturb lower court verdicts where there is competent evidence upon which the findings could reasonably be based.”<sup>4</sup> “Pursuant to Delaware law, appeals in criminal cases from the Court of Common Pleas to this Court are judged by whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>5</sup>

### ***Discussion***

Defendant contends that she did not violate the victim’s privacy because the GPS tracking device could only disclose the location and movement of the vehicle, not the activities inside the vehicle. Also, Defendant asserts that the only argument the State advanced was by analogy to Fourth Amendment search and seizure law, but there was no search or seizure that was unconstitutional in this case. However, the

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<sup>2</sup>*Dickens v. State of Delaware*, 2003 Del. Super. LEXIS 292, at \*9.

<sup>3</sup>*Id.*

<sup>4</sup>*Crockett v. State of Delaware*, 2003 Del. Super. LEXIS 368, at \*4.

<sup>5</sup>*Shambor v. State of Delaware*, 2002 Del. Super. LEXIS 353, at \*2-3.

Court-below disagreed. In its opinion, the Court-below held that a person has a right to privacy in the undercarriage of his/her car. The Court-below opined:

It is true that persons have diminished expectations of privacy in automobiles on public roads. These automobiles can be visually tracked by the police, but the police do not have the unfettered right to tamper with a vehicle by surreptitiously attaching a tracking device without either the owner's consent or without a warrant issued by a court. If the police whose duty is to prevent and detect crime have no such right then a private person would have no such right without the permission of the owner of the vehicle. The right to privacy is a fundamental right in a free and civilized society. The increasing use of electronic devices is eroding personal liberty.

The applicable statutes in this case are 11*Del. C.* §1335(a)(2) and 11*Del. C.* §1337(b). Section 1335(a)(2) states, in pertinent part, “(a) [a] person is guilty of violation of privacy when, except as authorized by law, the person: . . . (2) [i]nstalls in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place.” Section 1337(b) defines a private place as “a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.”

In *United States v. Knotts*,<sup>6</sup> the Supreme Court observed that “[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and

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<sup>6</sup>460 U.S. 276 (1983).

it seldom serves as one's residence or as the repository of personal effects." Additionally, "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." However, state courts have still found that persons have an expectation of privacy with respect to the tracking of their vehicles.<sup>7</sup>

This is a case of first impression in Delaware. The conduct involved in this matter is private action. Although the above-mentioned cases involve state action, the basic principle that a person has a protected privacy interest in his/her automobile is still applicable. Additionally, "the provisions of the Criminal Code are to 'be construed according to the fair import of their terms to promote justice and effect the purposes of the law,' without strict construction."<sup>8</sup>

Section 1335 prohibits installing a device for recording or observing an event in a place where a person may reasonably expect to be free from intrusion or

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<sup>7</sup>*See People v. Lacey*, 2004 N.Y. Misc. LEXIS 505 (N.Y. Co. Ct.) (finding that use of a GPS tracking device requires a physical intrusion into an individual's personal effects and, therefore, requires the police to obtain a warrant); *State v. Jackson*, 76 P.3d 217 (Wash. 2003) (holding that the installation of a GPS tracking device constituted a search and seizure and required the police to secure a warrant because it was a technological substitute for traditional visual tracking, and the possible intrusion into private affairs was quite extensive); *State v. Campbell*, 759 P.2d 1040 (Or. 1988) (holding that police use of a radio transmitter, secured to a burglar suspect's car, to locate the vehicle was search under the State Constitution and was unlawful absent a warrant or obviating exigency); *Johnson v. State*, 492 So. 2d 693 (Fla. Dist. Ct. App. 1986) (stating, "[a]lthough there is a diminished right of privacy in a motor vehicle, and by analogy, in an airplane, nevertheless, a search even of an automobile [and thus of an airplane] is a substantive intrusion into the privacy rights of its owner.").

<sup>8</sup>*Taylor v. State*, 679 A.2d 449, 454 (Del. 1996); *see also* 11 Del. C. §203.

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surveillance. I agree with the Court-below that a person has an expectation of privacy in his/her vehicle. Based on the stipulated facts, there was sufficient evidence to find Defendant guilty of violating Section 1335(a)(2) because she attached a GPS tracking device to the undercarriage of the victim's car, which recorded the movements and location of the vehicle. The Court-below determined that Section 1335(a)(2) does not mandate that the device disclose events inside the vehicle. Instead, the Court-below urged that the statute applies to a tracking device that determines the location or movement of any person. I find that this is an accurate assessment of the law. Therefore, the Court-below did not commit an error of law.

Based on the foregoing, Defendant's appeal from the decision of the Court-below is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution